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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 723

GUS N. KOUNTIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, after waiving a jury trial, was convicted in the United States District Court for the Northern District of Illinois on a two-count indictment charging the unlawful receipt, concealment, purchase, and sale of unlawfully imported heroin, in violation of 21 U.S.C. 174. He was sentenced to imprisonment for ten years on each count, the sentences to run concurrently. The court of appeals affirmed the conviction on September 21, 1965. A petition for rehearing was denied on October 12, 1965. The petition for a writ of certiorari was filed on November 5, 1965.

Petitioner's sole contention is that the trial court erred in rejecting his defense of "abandonment". The government's evidence showed that on the afternoon

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of March 9, 1964, petitioner was seen to hand one Moore a tan paper bag. Moore was followed and arrested. Four glassine bags of heroin were taken from a paper bag in Moore's car (A. 8–9, 12).[1] Later the same day, after telephoning Moore and stating that he had the "other stuff" (A. 14–15), petitioner delivered to Moore a second package which was found to contain six glassine bags of heroin (A. 9, 12–14).

Petitioner testified that Moore had been pressing him to get back in the narcotics business (A. 18–22). On the afternoon of March 9, he testified, Moore gave him some clothes in a plastic bag and a package to deliver (A. 24–26). The package consisted of a brown paper bag inside of which was a smaller paper bag containing narcotics (A. 25–26, 35–36). Petitioner placed the clothes and the small bag of narcotics in his automobile, then returned the empty, larger paper bag to Moore since Moore was concerned that it was covered with his fingerprints (A. 25, 35–36). In the evening petitioner called Moore and said he wanted to get rid of the "other stuff" (A. 26). That was how he happened to give Moore the package at the time of his arrest (A. 28–29). He testified that he admitted the "stuff" was his because the agents threatened to disgrace his family and "shake up" the house of his brother-in-law (A. 31). In rebuttal the narcotics agent testified that petitioner was not carrying a clothes bag in his hand when he crossed over to his

[1] "A." refers to the printed appendix filed in the court of appeals.

car from Moore's (A. 37). The agent denied threatening to disturb petitioner's family (A. 38).[2]

Petitioner's argument is based on the premise that by returning the heroin he had manifested an abandonment of his criminal enterprise. As noted by the court of appeals, however, the record does not disclose any abandonment of criminal intent (Pet. App. 2a). Even if it did, however, a belated repentance would not alter the fact that petitioner had concededly received and concealed the heroin in direct violation of law.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

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DECEMBER 1965.

[2] Moore's explanation of the events was not available since he had been killed prior to trial (A. 33).

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